Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DIXON *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 05–7053. Argued April 25, 2006—Decided June 22, 2006

Petitioner was charged with receiving a firearm while under indictment in violation of 18 U. S. C. §922(n) and with making false statements in connection with the acquisition of a firearm in violation of §922(a)(6). She admitted at trial that she knew she was under indictment when she purchased the firearms and knew that doing so was a crime, but claimed that she was acting under duress because her boyfriend had threatened to harm her and her daughters if she did not buy the guns for him. Bound by Fifth Circuit precedent, the District Court declined her request for a jury instruction placing upon the Government the burden to disprove, beyond a reasonable doubt, her duress defense. Instead, the jury was instructed that petitioner had the burden to establish her defense by a preponderance of the evidence. She was convicted, and the Fifth Circuit affirmed.

Held:

1. The jury instructions did not run afoul of the Due Process Clause. The crimes of conviction require that petitioner have acted "knowingly," §922(a)(6)—which "merely requires proof of knowledge of the facts that constitute the offense," *Bryan* v. *United States*, 524 U. S. 184, 193—or "willfully," §924(a)(1)(D)—which requires acting "with knowledge that [the] conduct was unlawful," *ibid.* Thus, the Government bore the burden of proving beyond a reasonable doubt that petitioner knew that she was making false statements and knew that she was breaking the law when she acquired a firearm while under indictment. It clearly met its burden when petitioner testified to that effect. Petitioner contends that she cannot have formed the necessary *mens rea* because she did not freely choose to commit the crimes. However, while the duress defense may excuse conduct that would otherwise be punishable, see *United States* v. *Bailey*, 444 U. S.

394, 409–410, the existence of duress normally does not controvert any of the elements of the offense itself. The fact that petitioner's crimes are statutory offenses with no counterpart in the common law supports this conclusion. The jury instructions were consistent with the requirement that the Government prove the mental states specified in §§922(a)(6) and 924(a)(1)(D) and did not run afoul of due process by placing the burden on petitioner to establish duress by a preponderance of the evidence. Pp. 3–5.

2. Modern common law does not require the Government to bear the burden of disproving petitioner's duress defense beyond a reasonable doubt. The long-established common-law rule, which places the burden of proving that defense on the defendant, was not upset by *Davis* v. *United States,* 160 U. S. 469. There, the Court interpreted a defendant's insanity to controvert the necessary *mens rea* for a murder committed "feloniously, wilfully, and of his malice aforethought," *id.,* at 474, and required the Government to prove the defendant's sanity beyond a reasonable doubt because the evidence tending to prove insanity also tended to disprove an essential element of the offense. The duress evidence that petitioner adduced at trial does not contradict or tend to disprove any element of her statutory offenses. She is also not helped by the resulting "*Davis* rule," which was not constitutionally mandated, and which Congress overruled by statute, requiring a defendant to prove insanity by clear and convincing evidence.

Petitioner's reliance on *Davis* also ignores the fact that federal crimes are "solely creatures of statute," *Liparota* v. *United States,* 471 U. S. 419, 424, and thus the Court must effectuate the duress defense as Congress "may have contemplated" it in the context of these specific offenses, *United States* v. *Oakland Cannabis Buyers' Cooperative,* 532 U. S. 483, 490, n. 3. The Court can assume that, when passing the relevant 1968 Act, Congress was familiar with the long-established common-law rule and the rule of *McKelvey* v. *United States,* 260 U. S. 353, 357—that the one relying on an affirmative defense must set it up and establish it—and would have expected federal courts to apply a similar approach to any affirmative defense or excuse for violating the new law. To accept petitioner's contrary hypothesis that *Davis* dramatically upset well-settled law would require an overwhelming consensus among federal courts placing the burden on the Government, but conflict among the Circuits demonstrates that such consensus has never existed. For a similar reason, no weight is due the 1962 Model Penal Code. There is no evidence that Congress endorsed the Code's views or incorporated them into the 1968 Act. In fact, when Congress amended the Act to add a *mens rea* requirement, it punished "willful" violations, a mental state not em-

braced by the Code. Effectuating the affirmative defense as Congress may have contemplated it, the Court presumes that, in the context of the firearms offenses here and the long-established common-law rule, Congress intended petitioner to bear the burden of proving the duress defense by a preponderance of the evidence. Pp. 5–15.

413 F. 3d 520, affirmed.

STEVENS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, GINSBURG, and ALITO, JJ., joined. KENNEDY, J., filed a concurring opinion. ALITO, J., filed a concurring opinion, in which SCALIA, J., joined. BREYER, J., filed a dissenting opinion, in which SOUTER, J., joined.